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1                   IN THE UNITED STATES DISTRICT COURT  
2                   NORTHERN DISTRICT OF CALIFORNIA  
3                   SAN JOSE DIVISION  
4  
5  
6       ZINUS, INC.,  
7       a California corporation,  
8                   Plaintiff,  
9       vs.                   Case No. 07-CV-03012 PVT  
10       SIMMONS BEDDING COMPANY,  
11       a Delaware corporation,  
12       and DREAMWELL, LTD., a  
13       limited liability company  
14       of Nevada,  
15                   Defendants,  
16       AND RELATED COUNTERCLAIMS. /  
17  
18                   DEPOSITION OF SCOTT REEVES  
19                   THURSDAY, NOVEMBER 15, 2007  
20                   PAGES 1 to 65  
21  
22       REPORTED BY: LOUISE MARIE SOUSOURES, CSR NO. 3575  
23                   Certified LiveNote Reporter  
24  
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1 A P P E A R A N C E S

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1           BE IT REMEMBERED that pursuant to Notice, and  
2   on Thursday, November 15, 2007, commencing at the hour  
3   of 4:00 p.m. thereof, at Four Embarcadero Center, San  
4   Francisco, California, before me, LOUISE MARIE  
5   SOUSOURES, a Certified Shorthand Reporter, there  
6   personally appeared:

7           SCOTT REEVES,  
8   called as a witness by the Defendants, and who, being  
9   first duly sworn, was thereupon examined and testified  
10   as hereinafter set forth:

11           EXAMINATION BY MR. WILSON:

12           Q.   Would you please state your full name for the  
13   record?

14           A.   Scott Philip Reeves.

15           Q.   Where do you live, Mr. Reeves, just the city?

16           A.   Pleasanton, California.

17           Q.   Where do you work?

18           A.   Pleasanton, California.

19           Q.   What company do you work for?

20           A.   Zinus.

21           Q.   Zinus, is there a corporate name?

22           A.   Zinus, Inc.

23           Q.   How long have you worked at Zinus, Inc.?

24           A.   Four years.

25           Q.   Were you a founder of Zinus, Inc.?

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1 A. No.

2 Q. What is your title for Zinus, Inc.?

3 A. President.

4 Q. How long have you been the president there?

5 A. Four years.

6 Q. Prior to starting your work for Zinus, Inc.  
7 four years ago, did you work for any predecessor or  
8 affiliate company of Zinus?

9 A. I don't know how to answer that. We worked  
10 for -- predecessor company, but that Zinus was invested  
11 in named NorthPole. I wasn't sure how to answer that.

12 Q. That's all right. I would have got there  
13 anyhow, a quicker way to do it.

14 When did you work at NorthPole?

15 A. April of '99 to July 1st, 2003.

16 Q. Was NorthPole in the mattress business?

17 A. No.

18 Q. Is there more than one company that bears the  
19 Zinus name, to your knowledge? You look a little  
20 confused so let me ask it a little bit differently.

21 I see reference sometimes to Zinus U.S. and  
22 Zinus China.

23 Are they separate companies?

24 A. Separate, separate companies owned by Zinus

25 korea. Exh 2.txt

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1                   They're one hundred percent subsidiaries of  
2   Zinus Korea.  
3           Q. Have you ever had your deposition taken before?  
4           A. Yes.  
5           Q. How many times?  
6           A. Once.  
7           Q. About how long ago?  
8           A. I don't recall exactly, but approximately five  
9   years ago.  
10          Q. Do you recall generally the context in which  
11   your deposition was taken, what kind of matter?  
12          A. A trademark matter, I believe.  
13          Q. Were you a party to the case?  
14          A. Our company was.  
15          Q. Was that while you were working at NorthPole?  
16          A. Yes.  
17          Q. Well, since you've already got a little  
18   experience in depositions, I won't bore you with too  
19   much detail of the process, but there are a couple  
20   things I would like to go over with you.  
21               First off is I need you to make sure you listen  
22   to the question and answer the question that's being  
23   asked.

24 Can you do that? Exh 2.txt

25           A.    Sure.

6

1 Q. You'll need to answer the questions audibly,  
2 you've been doing quite well at that so far, but it's  
3 difficult for the court reporter to pick up a shake or  
4 nod of the head.

5 Do you understand?

6 A. Yes.

7 Q. You need to try not to step on my questions and  
8 I'll try to do the same with respect to your answers,  
9 because once again, the court reporter can't transcribe  
10 when both of us are talking at the same time.

11 Do you understand that?

12           A.   Yes.

13 Q. If I ask you a question and you don't  
14 understand what I'm asking you, don't be shy about  
15 letting me know that you don't understand and asking me  
16 to clarify the question.

17 I may ask you what it is you don't understand,  
18 but it's important that you let me know if you don't  
19 understand the question, because otherwise, if you  
20 answer it, it will appear on the transcript as though  
21 you do understand the question.

22 Does that make sense to you?



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23 A. Yes, it does.

24 Q. If you need a break for any reason, let me

25 know, need to stretch your legs, not feeling well, need

7

7

1 a drink of water, whatever it is, we have water here,  
2 but if you need a break for any reason, let me know and  
3 we'll take it.

4 I only ask that unless it's absolutely  
5 necessary you don't break while a question is pending.

6 Do you understand that?

7 A. Yes.

8 Q. Do you understand that you've been designated  
9 to testify on behalf of the company as a company  
10 representative for this deposition today?

11 A. Yes.

12 Q. So you're testifying in your individual  
13 capacity but also as a corporate designee.

14 Do you understand that?

15 A. Yes.

16 Q. Do you understand that you have been designated  
17 to testify on particular topics?

18 A. Yes.

19 Q. Do you understand that one of those topics is  
20 the process or processes for packaging the Swirl Wrap  
21 product?

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22 A. Yes.

23 Q. Are you prepared to testify regarding all  
24 information known or reasonably available to Zinus on  
25 the subject of processes or packaging the Swirl Wrap

8

7

1 product?

2 A. Yes.

3 Q. Do you understand one of the other topics  
4 you've been designated to testify on is the  
5 circumstances surrounding the decision to move to the  
6 Swirl Wrap process?

7 A. Yes.

8 Q. Are you prepared to testify regarding all  
9 information known or reasonably available to Zinus on  
10 that topic?

11 A. Yes.

12 MR. WILSON: I'd like to have marked as  
13 Exhibit 201 -- Darien, so you understand, I think it  
14 makes sense since we're a defendant to start with later  
15 numbered exhibits. That way we can number our exhibits  
16 sequentially through the case.

17 I'll start with 201, I'll give you 1 to 200. I  
18 don't think you'll need that many during the case, but  
19 that way we will at least have a consistent numbering  
20 scheme.

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21 I would like to have marked as Exhibit 201 a  
22 document entitled "Declaration of Scott Reeves in  
23 support of Zinus, Inc.'s motion for summary adjudication  
24 of noninfringement."  
25 (Exhibit No. 201 was marked.)

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1 BY MR. WILSON:  
2 Q. Do you recognize this document? Take your time  
3 to look at it to make sure.  
4 A. Yes.  
5 Q. What do you recognize this as?  
6 A. My declaration of facts surrounding Swirl Wrap,  
7 packaging method thereof.  
8 Q. Now, I'd like you to take a look at page 5, if  
9 you would, final page.  
10 Is that your signature?  
11 A. Yes, it is.  
12 Q. And did you execute this document on or about  
13 September 29th, 2007?  
14 A. It appears I had.  
15 Q. I note that the exhibits, there were exhibits  
16 to this declaration when you signed it, correct?  
17 A. I believe so.  
18 Q. Photographs? Does --  
19 A. Yes.

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20 Q. And they aren't attached to this document. We  
21 will look at those, but just for recordkeeping, it  
22 seemed easier.  
23 Other than that, this looks like the  
24 declaration you signed, right?  
25 A. Yeah.

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1 Q. Did you draft this declaration yourself?  
2 A. Not the legalese, but the contents.  
3 Q. Does Zinus sell a product that it refers to as  
4 the Swirl Wrap product?  
5 A. How do you define sell?  
6 Q. Offer it to customers who pay you money.  
7 A. Yes.  
8 Q. Does Zinus package the product using the Swirl  
9 Wrap name?  
10 A. No, we don't package the product using the  
11 Swirl Wrap name. We introduce it as Swirl Wrap  
12 packaging method.  
13 Q. When you say you introduce it as Swirl Wrap  
14 packaging method, you introduce it to who?  
15 A. To customers like Wal-Mart specifically with  
16 hopes of soliciting a large volume order.  
17 Q. Is the name on the packaging of the product  
18 called Mattress-in-a-Box?

Exh 2.txt  
19 A. Real Mattress-in-a-Box.  
20 Q. How long has Zinus sold a product by the name  
21 of Real Mattress-in-a-Box?  
22 A. With that brand name, my best estimation is  
23 probably a year plus, but not much more over a year.  
24 Selling a Mattress-in-a-Box, longer than a  
25 year.

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1 Q. Now, I'm not going to ask you about the product  
2 more than a year old because this deposition is limited  
3 to the Swirl Wrap product.  
4 I will ask you from time to time some questions  
5 just to put the Swirl Wrap product in context and I'll  
6 probably do a little bit of that right now.  
7 Is the Real Mattress-in-a-Box product you're  
8 selling now different in any way than the Real  
9 Mattress-in-a-Box product you were selling a year ago?  
10 A. No.  
11 Q. Is the Real Mattress-in-a-Box product that  
12 you're selling now manufactured or packaged in a  
13 different way than the Real Mattress-in-a-Box product  
14 that you were selling a year ago?  
15 A. We have a new method of packaging, which we  
16 call Swirl Wrap.  
17 We don't just manufacture spring mattresses.

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18 We manufacture foam mattresses, we manufacture  
19 air mattresses and we manufacture spring mattresses.

20 So we manufacture three different types of  
21 mattresses all of which we package in a box, some we  
22 don't.

23 Q. Do you sell all three types of those mattresses  
24 under the name Real Mattress-in-a-Box?

25 A. We try to, yes.

12

8

1 Q. Is there any difference in the way that you  
2 manufacture or package the spring mattress version of  
3 Mattress-in-a-Box today as opposed to how you  
4 manufactured or packaged the Real Mattress-in-a-Box  
5 spring mattress product a year ago?

6 A. In the United States, yes.

7 Q. What is that difference?

8 A. That difference is what we call Swirl Wrap and  
9 the difference comes from wrapping our mattress onto a  
10 sheet of film, in other words, rolling it up and then  
11 banding it to hold it in place.

12 Q. How does the Swirl Wrap process differ from the  
13 previous process that was used on the spring mattress  
14 Real Mattress-in-a-Box products?

15 A. We do not put it into a PE, polyethylene,  
16 duffel bag.

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17 Q. Let me make sure I understand.

18 Is it accurate to say in the spring mattress  
19 version of the Real Mattress-in-a-Box product that you  
20 were selling a year ago, that product was put into a  
21 polyethylene -- what was the word you used?

22 A. Duffel bag.

23 Q. Duffel bag as part of the packaging process?

24 A. I'm sorry, repeat that, Ken.

25 Q. Sure. In the version of the -- strike that.

13

7

1 In the spring mattress version of the Real  
2 Mattress-in-a-Box product that you were selling a year  
3 ago, is it fair to say that you packaged that product in  
4 part by putting it into a polyethylene duffel bag?

5 A. We did initially.

6 Q. Is it accurate to say that Zinus has now  
7 replaced that step with what you referred to as a Swirl  
8 Wrap process?

9 A. Correct.

10 Q. I understand that you have disclosed to  
11 Wal-Mart that you've changed the process for packaging  
12 the product; is that right?

13 A. That's correct.

14 Q. Is there anyone else to whom you have specified  
15 that you packaged the Mattress-in-a-Box product using a

Exh 2.txt

16 Swirl wrap process?

17 A. Is your question have we introduced that Swirl  
18 wrap process to any other customers?

19 Q. My question is: Do you use the term -- do you  
20 call out that the product is manufactured or packaged  
21 using a Swirl wrap process to anybody other than  
22 Wal-Mart?

23 A. No. This process was designed for Wal-Mart.

24 Q. And why was this process designed for Wal-Mart?

25 A. Because that's our sales strategy for this

14

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1 product. They're the first customer and the major  
2 customer we're soliciting the sales to.

3 Q. Do you have other customers right now that  
4 you're soliciting sales to of the Swirl wrap packaged  
5 product?

6 A. No. No, no.

7 Q. I'd like you, if you would, to take a look at  
8 paragraph 3 of your declaration.

9 I'll tell you what I'm going to do. I'm going  
10 to cover paragraphs 3 through 6 and do them one-by-one  
11 but essentially going to ask you for each of them, so  
12 you can look at them with this in mind, whether those  
13 steps are the same in the Swirl wrap process as they  
14 were in what I'll refer to as the original process.



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15 A. Okay.

16 Q. If I talk about the original process, will you  
17 understand that to mean the process that you used for  
18 packaging the spring mattress version of the Real  
19 Mattress-in-a-Box product a year ago before you adopted  
20 the Swirl wrap?

21 A. Yes.

22 Q. Okay. So I'd like you, if you would, to take a  
23 look at paragraph 3 of your declaration.

24 A. Uh-huh.

25 Q. My question is: Is the steps set forth in

15

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1 paragraph 3 the same in the Swirl wrap process as it was  
2 in the original process for the Real Mattress-in-a-Box  
3 product?

4 A. Correct.

5 Q. Take a look at paragraph 4, please. Is the  
6 steps set forth in paragraph 4 of your declaration the  
7 same in the Swirl Wrap process as it was in the original  
8 Real Mattress-in-a-Box process?

9 A. Correct.

10 Q. In paragraph 5, is that step in the Swirl wrap  
11 process the same as it was in the original Real  
12 Mattress-in-a-Box process?

13 A. Correct.

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14 Q. Finally, on paragraph -- with respect to  
15 paragraph 6, is the process set forth in that paragraph  
16 the same in the Swirl Wrap version of the product as it  
17 was in the original process for the Real  
18 Mattress-in-a-Box?

19 A. Point number 6 is correct.

20 Q. Now, I'd like you to look at paragraph 7.

21 Is the steps set forth in paragraph 7 the same  
22 in the Swirl Wrap process as it was in the original Real  
23 Mattress-in-a-Box process?

24 A. No.

25 Q. What is the purpose of the steps set forth in

16

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1 paragraph 7, namely putting the compressed mattress on a  
2 rectangular sheet of colored flexible film?

3 A. I'd have to -- can we go to number 8?

4 Q. Sure.

5 A. It really is -- number 8 is maybe more  
6 explanatory about that. Setting it on the flat film  
7 does not explain the process, but Swirl Wrap process is  
8 taking the compressed mattress, laying it down on the  
9 film, and then rolling it up together with the film and  
10 banding it.

11 And that part is different than the original  
12 way of packaging.

Exh 2.txt  
13 Q. So paragraphs 7, 8 and 9 are different?  
14 A. Yeah. Yes.  
15 Q. Why did Zinus move to Swirl Wrap process?  
16 A. Two reasons, I think, maybe more, but the first  
17 one is that our customer asked us to come up with a way  
18 to obviously go around any conflict with any possible  
19 patent.  
20 The second one is that we found that this  
21 process is one where it is cost efficient and stronger  
22 in containing the roll-up of the mattress.  
23 And this inspiration we got actually from Magni  
24 which was, I believe, an Italian company some years ago  
25 or Spain or Italy.

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1 Q. Prior to -- let me back up for a second.  
2 what do you mean when you refer to containing  
3 the roll-up of the mattress?  
4 A. Holding it together when it's rolled up.  
5 Q. Prior to adopting the Swirl Wrap process, was  
6 Zinus having a problem with containing or holding the  
7 roll-up of the mattress in the original version of the  
8 Real Mattress-in-a-Box product?  
9 A. From time to time, it would bulge.  
10 Q. When you say it would bulge, what are you  
11 referring to?

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- 12 A. It would want to expand itself.
- 13 Q. Now, as I understand it, the product at that
- 14 time was in a polyethylene duffel bag?
- 15 A. That's correct.
- 16 Q. Would it try to expand itself beyond the
- 17 boundaries of the polyethylene duffel bag?
- 18 A. Sometimes that bag would rip.
- 19 Q. What was the purpose of the polyethylene duffel
- 20 bag?
- 21 A. To hold the product in place.
- 22 Q. Was a purpose of the polyethylene duffel bag to
- 23 contain the roll-up, stop it from expanding?
- 24 A. Part of it, yes, the plastic that it was
- 25 compressed in would also help in holding it, so they

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- 1 worked in concert with one another.
- 2 Q. When you talk about the plastic it was
- 3 compressed in, are you referring to what you described
- 4 as the sheath in your declaration?
- 5 A. Yes, the sandwich bag.
- 6 Q. What causes the Real Mattress-in-a-Box product
- 7 to expand when it's in its sheath?
- 8 A. It -- I'm not sure technically, but I believe
- 9 it's the springs wanting just to uncompress themselves
- 10 from time to time.

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11 Q. That's as a result of the fact that you have  
12 springs that in their normal state are at a certain  
13 height and they're pushed down to a lower height than  
14 their natural height so they naturally want to expand  
15 back to their original or near their original height,  
16 right?

17 A. Yes, and we compress it by pushing it down into  
18 that state and then holding it there inside the sandwich  
19 sheath.

20 Q. Is it fair to say, though, until the compressed  
21 mattress is removed from its sheath, it tends to want to  
22 expand?

23 A. No. I mean it will not want to expand  
24 completely. It will just want to naturally, to some  
25 extent, expand.

19

7

1 Q. Is the use of the what you refer to as the  
2 flexible film and the tape or bands designed to limit  
3 the ability of the compressed mattress to expand?

4 A. Correct.

5 Q. Is it -- is the combination of the film and the  
6 tape or the bands effective in limiting the ability of  
7 the compressed mattress to expand?

8 A. Yes.

9 Q. Can you explain how the combination of the

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10 flexible film and the bands or the tape limits the  
11 ability of the compressed mattress to expand?

12 A. Yes. The compressed mattress, while rolled up  
13 onto the what you call flexible film, that flexible film  
14 is actually reinforced, it is a woven material.

15 So it is a very strong film, yet flexible.

16 So as you roll that mattress continuously until  
17 such time as it's completely rolled, you now have all  
18 those layers of that reinforced flexible film material  
19 holding that mattress together, not allowing it to  
20 expand.

21 And then you combine that with reinforced  
22 taping that goes across the product.

23 The combination of those two elements gives us  
24 a very stable product.

25 Q. When you say a very stable product, what are

20

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1 you referring to?

2 A. One that will not expand.

3 Q. What material is used for the -- by the way, I  
4 use the term flexible film because it's what is used in  
5 the declaration.

6 Is there another term you use to describe the  
7 material that the mattress is placed on?

8 A. We can refer to it as flexible film if you

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9 prefer.

10 It's also referred to as polyethylene,  
11 reinforced polyethylene.

12 Q. Is that the material that it's made out of,  
13 polyethylene?

14 A. Yes.

15 Q. Why does Zinus use a rectangular sheet of  
16 flexible film?

17 A. Mattress is rectangular so that shape works  
18 best in the manufacturing process.

19 Q. Is the rectangular sheet of flexible film --  
20 strike that.

21 How wide is the rectangular sheet of flexible  
22 film when compared to the mattress?

23 A. I don't think I can answer that honestly, but  
24 it's going to -- my best guess is it's the same --  
25 slightly wider than the mattress, but I can't tell you

21

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1 specifically.

2 Q. Is it roughly the same size as the mattress?

3 A. No, it would be longer than the mattress.

4 Q. I'm sorry, is it roughly the same width as the  
5 mattress?

6 A. It would be a little bit wider than the  
7 mattress.

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8 Q. why is the rectangular flexible film a little  
9 bit wider than the mattress?

10 A. For some room.

11 Q. Does a rectangular sheet of plastic or flexible  
12 film that is slightly wider than the mattress assist in  
13 preventing the compressed mattress from expanding when  
14 it's rolled up?

15 A. Oh, I have no engineering testing data to say  
16 that it does, so I can't answer that accurately, but I  
17 would say that it would only in the fact that it would  
18 give us some tolerance to make sure that Swirl wrap is  
19 connecting or holding the entire mattress in its width.

20 Q. Let me ask you this: In the -- in paragraph 9  
21 of your declaration, you referred to ribbon-shaped  
22 bands?

23 A. Yes.

24 Q. Do you see that?

25 A. Yes, I do.

22

⌘

1 Q. When you refer to ribbon-shaped bands, what are  
2 you talking about? What do you mean?

3 A. Reinforced bands that are -- you've seen the  
4 strapping material on packaging before, that's a  
5 reinforced band.

6 Q. When you say it's ribbon-shaped, do you mean it



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7 is significantly longer than it is wide?

8 A. Yes.

9 Q. Would you say that the rectangular sheet of  
10 flexible film is ribbon-shaped?

11 A. Under that definition, the flexible film is  
12 longer than it is wide.

13 Q. But in your understanding of the term  
14 ribbon-shaped -- I mean I note you didn't use the term  
15 ribbon-shaped when you described the rectangular sheet  
16 although you did use it when you described the bands.

17 Was there a reason?

18 A. Well, strapping material is ribbon-shaped  
19 strapping material.

20 Q. If you had a rectangular sheet of flexible film  
21 that was dimensionally the same as the narrow  
22 ribbon-shaped bands, in other words, the dimensions of  
23 width to length were similar for the rectangular sheet,  
24 would it hold as well as the dimensions of the sheet  
25 that you, in fact, use?

23

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1 A. I don't understand that question at all.

2 Q. Okay. It's fair to say, isn't it, that the  
3 rectangular film that the mattress is rolled up in is  
4 significantly wider compared to the length of the film  
5 than the ribbon-shaped bands are wide compared to the

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6 length of the bands?

7 A. No, I didn't say that.

8 I said that the film, flexible film is slightly  
9 wider than the mattress itself and it is longer than the  
10 mattress is the way I defined the flexible film.

11 Q. Okay. Okay. When you used the term  
12 ribbon-shaped in paragraph 9, what were you thinking of  
13 as a definition? What did you understand that term to  
14 mean?

15 A. Reinforced ribbon straps, so these would be  
16 straps that would go around the circumference of the  
17 swirl wrapped product and part of that method of  
18 packaging that would help combine in holding everything  
19 in one place.

20 Does that answer?

21 Q. I think so. Let me just try to close the loop  
22 here. I may have asked this and I apologize if I did.

23 Based on your understanding of the term  
24 ribbon-shaped, do you consider the flexible film to be  
25 ribbon-shaped?

24

1 A. No.

2 Q. Has -- let me ask you this: Why is the  
3 rectangular sheet of flexible film colored?

4 A. It does not have to be colored. It can be

Exh 2.txt  
5 colored, but it doesn't have to be colored.

6 Q. Did Zinus originally choose to use colored  
7 flexible film for design and marketing reasons?

8 A. Initially, it was a thought.

9 Q. Has -- strike that.

10 Did Zinus use the step described in paragraph 7  
11 of your declaration for all of the Swirl Wrap Real  
12 Mattress-in-a-Box products that were made by Zinus up to  
13 the date you signed this declaration?

14 A. I'm sorry, Ken, can you repeat that?

15 Q. That's okay, absolutely.

16 Was the step set forth in paragraph 7 used in  
17 the manufacture of all Swirl Wrap products manufactured  
18 by Zinus up to the date that you signed your declaration  
19 on September 29th?

20 A. Yes.

21 Q. Now, I'm going to ask you a couple questions  
22 about paragraph 8.

23 It says that the compressed mattress and the  
24 flexible film are rolled together to form a cylindrical  
25 rolled-up mattress assembly.

25

7

1 How are they rolled up?

2 A. By hand and subsequently and most recently  
3 we've invested in new machinery to assist us in mass

Exh 2.txt  
4 producing this process packaging method.

5 Q. As of the time that your declaration was filed  
6 with the Court, had you used any process other than  
7 manually rolling up the mattresses as part of the swirl  
8 wrap process?

9 A. In no packaging method have we used any other  
10 method other than manually rolling. We've always  
11 manually rolled.

12 Q. Is the -- is the use of a machine to roll up  
13 the mattress something that's contemplated in the  
14 future?

15 A. Yes.

16 MR. WILSON: I'd like to have marked as  
17 Exhibit 202 a document, first page of which says  
18 Exhibit R-A, and the second page of which says figure 1.

19 (Exhibit No. 202 was marked.)

20 BY MR. WILSON:

21 Q. Do you recognize Exhibit 202?

22 A. Yes.

23 Q. Was Exhibit 202 one of the exhibits to your  
24 declaration? I'm going to help you out, not trying to  
25 trick you.

26

⌘

1 A. Yeah. I don't have those exhibits with me.

2 Q. You see in paragraph 8 of your declaration, it

Exh 2.txt  
3 says attached as Exhibit R-A through R-D?

4 A. Yes.

5 Q. Does that refresh your recollection that  
6 Exhibit R-A was attached to your declaration?

7 A. Yes.

8 Q. Does Exhibit R-A accurately depict the first  
9 step of the Swirl Wrap portion of the packaging process  
10 up to the date you signed your declaration? In other  
11 words, placing a piece of flexible film on the ground?

12 A. Yeah, but that wasn't the first step on the  
13 declaration.

14 Q. Okay.

15 A. Yeah.

16 Q. I didn't mean to -- again, I'm not trying --  
17 trust me when I say I'm not trying to trick you when I  
18 ask these questions.

19 A. I'm trying to be careful, Ken.

20 Q. I appreciate that.

21 Is it fair to say that figure 1 accurately  
22 depicts the first step of the new portion of the process  
23 that exists in the Swirl Wrap packaging, but not in the  
24 original manufacturing process?

25 A. Correct.

27

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1 MR. WILSON: I'd like to have marked as

Exh 2.txt

2 Exhibit 203 a document, first page of which says  
3 Exhibit R-B, the second page of which says figure 2.  
4 (Exhibit No. 203 was marked.)

5 BY MR. WILSON:

6 Q. Does -- do you recognize Exhibit 203?

7 A. Yes.

8 Q. Does Exhibit 203 and figure 2 in particular  
9 accurately depict the second step of the new portion of  
10 the Swirl Wrap process, namely putting the compressed  
11 mattress onto the flexible film?

12 A. Yes.

13 Q. And from this step, the compressed mattress is  
14 then rolled up into the flexible film, correct?

15 A. Yes.

16 Q. How does the -- how does the compressed  
17 mattress get onto the flexible film?

18 A. Manually.

19 Q. People put it onto the flexible film?

20 A. Yes.

21 Q. When Zinus uses the combination of flexible  
22 film and tape to limit the expansion of the compressed  
23 rolled-up mattress, does it use the tape in the manner  
24 depicted in Exhibit 203, namely, the tape is attached to  
25 the flexible film on one side before the mattress is

Exh 2.txt

1 rolled up?

2 A. This is one way in which we do it.

3 Another way in which we do it is we roll up the  
4 compressed mattress on the flexible film and then strap  
5 the adhesive tape around the circumference of the Swirl  
6 wrapped product.

7 Q. So you do it sometimes -- Zinus sometimes  
8 applies the tape in the manner depicted in Exhibit 203  
9 and other times applies the adhesive tape after the  
10 mattress is rolled into the flexible film, correct?

11 A. Yes, during this time, yes.

12 MR. WILSON: I'd like to have marked as  
13 Exhibit 204 a document, first page of which says  
14 Exhibit R-C, second page of which says figure 3.

15 (Exhibit No. 204 was marked.)

16 BY MR. WILSON:

17 Q. Do you recognize Exhibit 204?

18 A. Yes.

19 Q. Is Exhibit 204 an exhibit to your declaration?

20 A. Yes.

21 Q. Does Exhibit 204 accurately depict the manner  
22 in which the compressed mattress was rolled into  
23 flexible film as part of the Swirl Wrap process up to  
24 the date you signed your declaration?

25 A. Correct.

Exh 2.txt

1 MR. WILSON: I'd like to have marked as  
2 Exhibit 205 a document, first page of which is -- says  
3 Exhibit R-D, the second page of which says figure 4.  
4 (Exhibit No. 205 was marked.)  
5 BY MR. WILSON:  
6 Q. Do you recognize Exhibit 205?  
7 A. Yes, I do.  
8 Q. Was Exhibit 205 a declaration -- strike that.  
9 Was Exhibit 205 an exhibit to your declaration?  
10 A. I believe it was.  
11 Q. Does Exhibit 205 accurately depict the process  
12 for rolling up the compressed mattress into the flexible  
13 film up to the date in which you signed your  
14 declaration?  
15 A. Correct.  
16 Q. And to be clear, that process involved manually  
17 rolling up the mattress in the flexible film that was  
18 slightly wider than the mattress? That's the question.  
19 A. To answer that question, yes.  
20 Q. I'd like now to go back to your declaration,  
21 I want to talk to you for a couple minutes about  
22 paragraph 9.  
23 What do you mean -- strike that.  
24 In the first sentence, paragraph 9, it refers  
25 to using the ribbon-shaped bands to hold the roll in

30



Exh 2.txt

1 place.

2 what did you mean by that?

3 A. To hold the swirl wrap in place.

4 Q. Did that mean to -- to limit the compressed  
5 mattress from expanding after it was rolled up?

6 A. That's correct, both the flexible film that's  
7 reinforced and the strapping material combined together  
8 to give us a strong hold on that mattress.

9 Q. Why did Zinus choose to use ribbon-shaped bands  
10 as opposed to some other shape?

11 A. As in any manufacturing new design method of  
12 packaging, you experiment and we found the reinforced  
13 plastic strapping to work best for the purpose that we  
14 had in mind.

15 Q. And in a few minutes I'll talk to you about the  
16 experimenting because I'm interested in that as well.

17 Did you understand the adhesive tape to be a  
18 form of ribbon-shaped band? I'm not trying to trick you  
19 here.

20 I notice that in the second sentence of that  
21 paragraph, you say in one example, the ribbon-shaped  
22 bands are strips of adhesive tape?

23 A. Yes.

24 Q. When Zinus used ribbon-shaped tape in  
25 conjunction with the flexible film to limit or prevent

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Exh 2.txt

1 the compressed mattress from expanding, did it use  
2 strips of tape that surround it, went entirely around  
3 the circumference of the rolled-up mattress?

4 A. Correct.

5 Q. Did Zinus ever use strips of adhesive tape that  
6 did not go around the entire circumference of the  
7 rolled-up mattress?

8 A. If they did, I was not aware.

9 Q. So when you reference ribbon-shaped bands here,  
10 what you understood to be used was strips of tape that  
11 went around the entire --

12 A. Circumference.

13 Q. How many ribbon-shaped strips of adhesive tape  
14 would be used on an individual mattress?

15 A. Ken, that would be dependent upon a style or  
16 type of mattress.

17 So it could be three or it could be more,  
18 depending upon what style, what thickness mattress we  
19 were manufacturing.

20 Q. Why was the tape of the ribbon-shaped bands  
21 wrapped circumferentially around the rolled-up mattress?

22 A. Swirl wrap is a roll, it's rolled up so you  
23 need something to hold the total circumference.

24 Q. Was the reason that the ribbon-shaped bands  
25 were wrapped circumferentially around the rolled-up

Exh 2.txt

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1 mattress assembly because you believed that was the most  
2 effective way to limit the expansion of the compressed  
3 mattress?

4 A. Correct.

5 Q. I maybe asked you this earlier, but in the  
6 original mattress -- strike that.

7 In the original Real Mattress-in-a-Box product,  
8 was the purpose of the polyethylene duffel bag to limit  
9 or prevent the expansion of the compressed mattress?

10 A. Correct.

11 Q. What would happen if Zinus attempted to ship  
12 the Mattress-in-a-Box product by placing it in a box but  
13 without the flexible film and without tape to hold the  
14 roll?

15 A. It would expand itself naturally.

16 It could be -- at some point in time, during  
17 the shipping process, it could -- that plastic sandwich  
18 bag that is now sealed that's compressed the mattress  
19 could puncture which would allow -- which would make it  
20 expand itself and we don't puncture the mattress.

21 Q. Could the -- strike that.

22 If the Real Mattress-in-a-Box product was  
23 rolled up and put in a box without flexible film and  
24 tape or some other system to limit or restrain the  
25 expansion of the compressed mattress, would it impact

Exh 2.txt

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1 the ability of the box to withstand shipping?

2 A. Probably so.

3 Q. Might break the box, right?

4 A. Could break the box.

5 MR. WILSON: I'd like to have marked as  
6 Exhibit 206 a document, the first page of which says  
7 Exhibit R-E and second page of which says figure 5.

8 (Exhibit No. 206 was marked.)

9 BY MR. WILSON:

10 Q. Do you recognize Exhibit 206?

11 A. Can I stop you?

12 Q. Absolutely.

13 A. And go back to that last question?

14 Q. Sure.

15 A. Because I think it's important.

16 Q. Okay.

17 A. If we compress the mattress in its plastic  
18 sandwich bag, seal it like we're currently doing, and  
19 roll it up and tape it tightly shut, and place it in the  
20 box, it would not damage the box on its own.

21 It could potentially expand itself if that  
22 plastic bag was punctured and that's what we're trying  
23 to limit during time of shipping from the factory to the  
24 time it gets to the stores and consumer's home, we want  
25 to make sure that bed stays nice and contained and

Exh 2.txt

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1       secured.

2               So I wanted to clarify that.

3               Q.   Okay.   Thank you.

4               Do you recognize Exhibit 206?

5               A.   Yes.

6               Q.   Was Exhibit 206 an exhibit to your declaration?

7               A.   Yes.

8               Q.   Does Exhibit 206 accurately depict a Swirl Wrap  
9       packaged Real Mattress-in-a-Box product which was  
10      packaged using adhesive tape?

11              A.   Yes.

12              Q.   Do you have any estimate of how many Swirl Wrap  
13      packaged Mattress-in-a-Box products Zinus has made using  
14      the adhesive tape method?

15              A.   No.   Numerous, but no, I don't know exactly how  
16      many pieces.

17              Q.   More than a hundred?

18              A.   Less than a hundred.

19              Q.   Do you have an estimate of how many  
20      Mattress-in-a-Box products Zinus has made using the  
21      Swirl Wrap process and ribbon-shaped bands other than  
22      adhesive tape?

23              A.   Numerous and maybe more than a hundred.

24              Q.   Is Wal-Mart currently selling Mattress-in-a-Box  
25      product?

Exh 2.txt

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1 A. No.

2 Q. Are you aware of whether Wal-Mart is currently  
3 advertising Mattress-in-a-Box product on its web site?

4 A. No.

5 I'm not sure if walmart.com, if they did, I'm  
6 not sure if they do any longer.

7 Q. If walmart.com was offering for sale a Real  
8 Mattress-in-a-Box product today, would that product be a  
9 product manufactured using the original process or using  
10 swirl wrap process?

11 A. If it was a coil, end pocket style mattress, we  
12 would be doing it in swirl wrap.

13 If it was any of our other types of mattresses,  
14 such as foam or air, we would be doing it in our  
15 different, original style.

16 MR. WILSON: Let's go off the record for a  
17 second.

18 (Off record discussion.)

19 MR. WILSON: Back on the record.

20 BY MR. WILSON:

21 Q. I'd like to take a look at paragraph 10 of your  
22 declaration.

23 Does paragraph 10 accurately describe a step  
24 that is used, setting aside the reference to the  
25 mattress as banded and rolled up -- let me ask you a

Exh 2.txt

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1 better question.

2 See how paragraph 10 describes a process of  
3 putting the rolled-up mattress assembly into a cardboard  
4 packing box?

5 A. Yes.

6 Q. Is it accurate to say that in both the original  
7 Mattress-in-a-Box process and in the Swirl wrap  
8 Mattress-in-a-Box process, the rolled-up mattress  
9 assembly is placed into a cardboard packing box in the  
10 manner described in paragraph 10?

11 A. Yes.

12 MR. WILSON: I'd like to have marked as  
13 Exhibit 207 a document, first page of which says  
14 Exhibit R-F, second page of which says figure 6.

15 (Exhibit No. 207 was marked.)

16 BY MR. WILSON:

17 Q. Do you recognize Exhibit 207?

18 A. Yes.

19 Q. Is Exhibit 207 an exhibit from your  
20 declaration?

21 A. Yes.

22 Q. Does Exhibit 207 accurately depict the --  
23 strike that. I'm not going to -- there's nothing to ask  
24 about that.

Exh 2.txt

25 A. That's a tough one.

37

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1 Q. Do you have an understanding of what is meant  
2 by the term sleeve?

3 A. Yes.

4 Q. What do you understand that term means?

5 A. Two open ends.

6 Q. Did you ever hear of the term sleeve used in  
7 connection with a record album?

8 A. Yes.

9 Q. Those sleeves didn't have two open ends, did  
10 they?

11 A. Right.

12 Q. Do you have an understanding of the term  
13 containment sleeve?

14 A. No.

15 MR. WILSON: Let's go off the record for a  
16 second.

17 (Recess taken 4:58 to 4:59.)

18 MR. WILSON: Back on the record.

19 BY MR. WILSON:

20 Q. Turn back to your declaration, Exhibit 201,  
21 paragraph 12, just read through paragraph 12 and I'll  
22 have a couple questions on that.

23 I guess the first question I have is in the  
Page 39



Exh 2.txt

24 middle of the paragraph it refers to ribbon-shaped bands  
25 being bands of durable plastic stripping. What are you

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1 referring to there, what type of material? Is it those  
2 plastic bands you see wrapped around packages and boxes  
3 sometimes?

4 A. Yeah, that's one of the meanings.

5 Q. I ask the question because in paragraph 16, I  
6 just want to try to get clarity on this point, you'll  
7 see at the end of paragraph 16, it says in some units  
8 the ribbon-shaped bands are adhesive tape, in other  
9 units the ribbon-shaped bands are bands of durable  
10 plastic tape.

11 Is that an accurate statement?

12 A. Yes. Yeah. This is during the initial phase  
13 of developing this packaging method.

14 Q. So, is it fair to say you used ribbon-shaped  
15 bands of adhesive tape in some instance, durable plastic  
16 tape in other instances and durable plastic stripping  
17 that is not tape in other instances?

18 A. Durable plastic stripping or straps and  
19 adhesive tape.

20 Q. So in the last sentence here, which of those  
21 two categories do you understand durable plastic tape to  
22 fall into or was that just kind of a --

Exh 2.txt

23 A. There's two processes.  
24 One was the plastic strap as you reference and  
25 the other one is the durable adhesive tape.

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1 Q. Okay.  
2 A. That's what's meant.  
3 Q. Okay. Can you describe how the ribbon-shaped  
4 bands are placed around the mattress?  
5 A. Manually today.  
6 Going forward, through machinery.  
7 Q. To apply the ribbon-shaped bands, is the  
8 compressed and rolled-up mattress lifted?  
9 A. Yes.  
10 Q. Is it lifted so that it is perpendicular to the  
11 ground?  
12 A. More horizontal to the ground.  
13 Q. Is it lifted off the ground?  
14 A. Yes.  
15 Q. Are both ends lifted off the ground to put the  
16 straps on at the same time?  
17 A. Yes.  
18 Q. Is there any movement from side to side of the  
19 compressed mattress --  
20 A. No.  
21 Q. How does Zinus ensure that the rolled-up

Exh 2.txt

22 mattress is stationary when the bands are applied?  
23 A. The compressed mattress, while rolled up into  
24 the Swirl wrap or the flexible film, when we finish that  
25 rolling process, it's immediately strapped by the same

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1 crew, team, that's rolled it up.  
2 Once it's rolled, it's pretty tight.  
3 Then the straps come in and put the final  
4 securement around the circumference of the Swirl wrap.  
5 Q. Are the straps closed at the time they're  
6 applied?  
7 A. No.  
8 Q. How are the straps closed?  
9 A. Through the strapping method with a -- I don't  
10 remember what you call that attachment piece.  
11 Q. So is it fair to say that the compressed  
12 rolled-up mattress is lifted and then the straps are  
13 wrapped around the mattress?  
14 A. Correct.  
15 Q. They're wrapped around and pulled tight to  
16 close, correct?  
17 A. That's correct. That's correct.  
18 Q. At line 8, paragraph 12, you see the reference,  
19 it says "the bands are wrapped around the rolled-up  
20 mattress such that there is significant frictional

Exh 2.txt

21 force."

22           What are you referring to when you talk about  
23 the frictional force?

24           A. Holding. Like you just mentioned, we strap it  
25 tight. So when we strap it tight, we're holding it

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♀

1 tight.

2           That's the frictional force.

3           Q. Is there a reason that Zinus doesn't use the  
4 straps or bands without the flexible film?

5           A. Yes. As I mentioned earlier in my deposition,  
6 the reinforced flexible film adds to the strength of  
7 ensuring our product will not be damaged in the course  
8 of transportation and will get to the consumer's home in  
9 the proper order.

10          Q. Okay. Does the flexible film assist in  
11 resisting the frictional force created by the rolled-up  
12 mattress in conjunction with the bands?

13          A. I guess I would say it would minimize the  
14 frictional force, not help it.

15          Q. And when you say it would minimize the  
16 frictional force, you mean the --

17          A. The reinforced flexible film combined together,  
18 rolled up inside and together with the compressed  
19 mattress.

Exh 2.txt

20 Q. Minimizes the frictional force by minimizing  
21 the expansion capabilities?

22 A. Yes.

23 Q. I'd like you to take a look at paragraph 13.  
24 When you use the second case described in  
25 paragraph 13, where the mattress is compressed outside

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¶

1 the United States, and then boxed in the United States,  
2 is that a fair characterization of what is referred to  
3 as the second case?

4 A. Yes.

5 Q. What is done, if anything, to the mattresses as  
6 they're shipped from their -- the place where they're  
7 compressed to the United States to prevent the bag, the  
8 sheath from ripping due to the expansion of the  
9 mattress?

10 A. Under that particular scenario, we would be  
11 shipping those under a different method in the container  
12 coming to the United States so that it would be coming  
13 to our own facilities and anything that did expand in  
14 the container, then we would recompress or sell in a  
15 different manner.

16 Q. I'd like you to take a look at paragraph 14.  
17 I have a question about the last sentence in  
18 that paragraph.

Exh 2.txt

19 A. Paragraph 14.

20 Q. Paragraph 14, it says "I am currently  
21 attempting to sell the Swirl Wrap product in the United  
22 States where the Swirl Wrap product is made using the  
23 Swirl Wrap packaging method."

24 Do you see that?

25 A. Yes.

43

7

1 Q. Is the product that you're attempting to sell  
2 made using case one where the entire product is packaged  
3 outside the United States or case two where the product  
4 is compressed outside of the United States but boxed in  
5 the United States or does it matter?

6 A. The first scenario, where we're boxing it  
7 outside the United States, so completing the method of  
8 packaging outside the United States, selling to  
9 Wal-Mart.

10 Q. Okay. Are you selling or soliciting sales for  
11 the product that is compressed outside the United States  
12 but boxed within the United States?

13 A. Not yet.

14 Q. Do you intend to continue utilizing a process  
15 where product is packaged in part outside the United  
16 States and partly in the United States?

17 A. Possibly, but not -- that's not finalized yet.

Exh 2.txt

18 Q. And for what reason would you do that?

19 A. Do what?

20 Q. Would you utilize a process where the packaging  
21 takes place both inside and outside the United States as  
22 opposed to a process where the packaging occurs solely  
23 abroad?

24 A. There might be reasons where we needed to bring  
25 in the boxes separate from the mattress.

44

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1 Q. When did Zinus begin to contemplate moving from  
2 the original packaging process for the Real  
3 Mattress-in-a-Box product to some other process?

4 A. Prior to August, just slightly prior to August.

5 Q. Can you describe what investigation or research  
6 took place leading to the ultimate decision to move to a  
7 new process?

8 A. Yes. We were highly motivated by our customer  
9 Wal-Mart due to the fact that Dreamwell had sent them a  
10 letter indicating that we would be infringing on their  
11 patent and properly so, I guess, Wal-Mart had to do an  
12 internal investigation to make sure that they were doing  
13 the right thing and we were doing the right thing.

14 Q. And what happened as a result of that  
15 investigation?

16 A. They needed something that would obviously --

Exh 2.txt

17 obviously go around the patent.

18 Q. And so what -- can you describe what happened  
19 next in terms of the process of investigating  
20 alternatives? And I don't want you to disclose any  
21 attorney-client communications as part of this process.  
22 I want you to --

23 A. Very simple. It was a public article written  
24 about a company called Magni years ago who invented the  
25 Mattress-in-a-Box and through our investigation, we

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±

1 found that they had been using this process for 50 years  
2 or some long period of time.

3 And so that was our inspiration of swirl wrap.

4 Q. Can you describe -- strike that.

5 was it -- did you personally see whatever was  
6 written by Magni about their process?

7 A. Yes, I'm the one that read the article.

8 Q. Was it an article or a patent?

9 A. No, it was an article. It was in a mattress  
10 publication or bedding publication.

11 Q. What did you understand their packaging process  
12 to be from the article or did the article tell you  
13 anything about that?

14 A. It didn't. The article didn't disclose about  
15 their packaging. It just said it had been doing



Exh 2.txt

16 Mattress-in-a-Box and had for some time. Through our  
17 investigation, we found it was a long, long time ago.

18 And so that's what we learned.

19 MR. WILSON: I'd like to have marked as  
20 Exhibit 208 what appears to be -- a document bearing  
21 Bates number P 002000.

22 (Exhibit No. 208 was marked.)

23 BY MR. WILSON:

24 Q. Do you recognize this document?

25 A. Yes.

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1 Q. What is this document?

2 A. It's an e-mail.

3 Q. Were you copied on this e-mail? I don't see  
4 your name on it.

5 A. I thought I was.

6 Q. At any rate, you've seen this is at some  
7 point --

8 A. Yes.

9 Q. -- as part of your business with Zinus,  
10 correct?

11 A. Yes.

12 Q. This document, Exhibit 208, refers to four  
13 different packing methods.

14 Did Zinus experiment with four different  
Page 48

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15 methods to package product after it decided to move away  
16 from the original Mattress-in-a-Box process?

17 A. No, I believe Mr. CR Ahn, he's Korean, but his  
18 English meaning four different types of taping.

19 Does that answer your question, Ken?

20 Q. Yes, it does. Who is Mr. CR Ahn?

21 A. He is president of Zinus China.

22 Q. Who is Mr. TP Lee?

23 A. He is CEO.

24 Q. Of --

25 A. Of Zinus.

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1 Q. In Korea?

2 A. In Korea.

3 Q. Now, I'd like you to look -- kind of go out of  
4 order here, but I'd like you to look at the third item  
5 here first under bullet 3, putting into no bottom and no  
6 top PE sleeve?

7 A. Uh-huh.

8 Q. Did Zinus experiment with a packaging method  
9 involved putting the compressed mattress into a no  
10 bottom no top polyethylene sleeve?

11 A. Yes.

12 Q. Why did Zinus --

13 A. I think -- if I understand his English, that is

Exh 2.txt

14 your flexible film, that's the meaning of no bottom and  
15 no top.

16 Q. Do you know whether Zinus in China experimented  
17 with a packaging method which involved rolling up the  
18 mattress and then sliding a sleeve over the top of it?

19 A. No.

20 Q. No, you don't know if --

21 A. No, we did not.

22 Q. Do you recall, when you originally saw this  
23 e-mail, seeing pictures attached to it?

24 A. I don't recall.

25 MR. WILSON: Darien, I appreciate the document

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1 production that you provided to us. I think you did a  
2 good job trying to run down the documents. I did notice  
3 on this one, I just noticed today it does reference what  
4 sounds like it's four photographs.

5 If you can take a look and see if there are --  
6 if there are pictures that --

7 MR. WALLACE: I don't want to testify here, but  
8 the answer is there's only two. I realize it says  
9 there's four but there's only two, and they're produced.  
10 He said he shows four and the attachment had two and I  
11 confirmed that.

12 MR. WILSON: Okay, great. Let me just have  
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13 marked as Exhibit 209 a couple of photographs bearing  
14 Bates numbers P 2001 and P 2002.

15 (Exhibit No. 209 was marked.)

16 BY MR. WILSON:

17 Q. Have you seen Exhibit 209 before?

18 A. I don't recall, Ken. I honestly don't recall.

19 MR. WILSON: Darien, I don't want you to  
20 testify, but are these documents do you think --

21 MR. WALLACE: These were the documents  
22 attached, yes.

23 MR. WILSON: Okay.

24 BY MR. WILSON:

25 Q. But you don't --

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1 A. I know these processes.

2 Q. But you don't recall seeing these documents  
3 before, right?

4 A. I could have, but it was back in August.

5 So I don't -- I know what these are, put it to  
6 you this way.

7 Q. What are they?

8 A. These are the Swirl Wrap packaging method.

9 Q. Let me turn back to Exhibit 208 again, which is  
10 the e-mail that we were talking about.

11 I'd like you to look at item number 4, which  
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12 refers to round shape inner box.

13 You see it suggests putting into a round shape  
14 inner box made of cardboard.

15 Did Zinus experiment with a packaging method  
16 that involved using two cardboard boxes, an outer box  
17 and then a second inner box that would serve as a type  
18 of containment sleeve?

19 A. I don't think so.

20 Q. Zinus -- is it fair to say that Zinus U.S. --

21 A. No, not to my understanding did we ever -- we  
22 might have experimented one or two times, but we would  
23 have quickly gone away from that.

24 Q. why would Zinus have quickly gone away from  
25 that approach?

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1 A. Because of the swirl wrap with the flexible  
2 film was definitely better.

3 Q. Better in what way?

4 A. In holding the mattress together.

5 Q. The first item in this e-mail refers to four  
6 taping.

7 Do you see that?

8 A. Yes.

9 Q. Does that refer to a method that involved  
10 rolling up the compressed mattress and then attempting

Exh 2.txt

11 to secure it with tape without the flexible film?

12 A. Yes. No, with flexible film.

13 I think his meaning here is -- wait a minute,  
14 let me read this.

15 Q. Why don't you read the entire document. I want  
16 to make sure we're --

17 A. I mean you're assuming that I understand his  
18 English completely, too, okay.

19 Okay. I've read it, Ken.

20 Q. Did Zinus experiment with a packaging method  
21 that involved rolling up the mattress, the compressed  
22 mattress and taping the sheath or the bag closed without  
23 a flexible film backing?

24 A. It appears that they did.

25 Q. I take it that method has not been used?

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1 A. That's correct, that method has not been used.

2 Q. Why is that?

3 A. Not strong enough.

4 Q. Okay.

5 A. I think I mentioned earlier in my deposition,  
6 if we just take the compressed mattress and tape it and  
7 drop it into the box, it might look okay for that time  
8 being, but during transportation and handling, if that  
9 bag is punctured, it would gradually open and bust open

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10 the box.

11 Q. Zinus ultimately concluded that utilizing  
12 taping in conjunction with the flexible fabric would  
13 perform or would provide a more effective solution to  
14 preventing the expansion of the mattress, correct?

15 A. As an improvement above and beyond this point  
16 number one, but not the best solution.

17 Q. Do you see the reference to inflating power and  
18 it's the second bullet of paragraph 2, still  
19 insufficient to prevent the inflating power?

20 A. Yes.

21 Q. Do you have an understanding of what is  
22 referenced by inflating power? That term also is in the  
23 second bullet point in paragraph 1.

24 A. I think that meaning is also as I described it  
25 to you, during transportation, this mattress if not

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1 properly secured would potentially be punctured and  
2 inflate.

3 MR. WILSON: I'd like to have marked as  
4 Exhibit 210 a document bearing Bates number P 002010.  
5 (Exhibit No. 210 was marked.)

6 BY MR. WILSON:

7 Q. Do you recognize this document?

8 A. Yes.

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9 Q. Is this an e-mail that you sent to Simmons?

10 A. Yes, to Mr. Eitel.

11 MR. WILSON: I need to take a break for just a  
12 second, okay? Let's go off the record.

13 (Recess taken 5:24 to 5:30.)

14 MR. WILSON: Back on the record.

15 BY MR. WILSON:

16 Q. So I'd like you to take a look at Exhibit 210  
17 and in the first sentence of the second paragraph, you  
18 refer to "The fact that we had developed a new, improved  
19 product."

20 Do you see that?

21 A. Uh-huh.

22 Q. What did you consider the improvement to be of  
23 the swirl wrap product?

24 A. There was not an improvement to swirl wrap.

25 I was just making it known to Mr. Eitel that we

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♀

1 had developed swirl wrap, a product we called swirl  
2 wrap, a packaging method we called swirl wrap.

3 Q. Okay. So when you referred to how you  
4 developed a new, improved product, you just wanted to  
5 identify that you had found a new method?

6 A. Yeah, new method, yes, that's correct.

7 Q. Have you received any feedback from customers



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8 relating to your -- strike that.

9 Let me ask you this: Have you delivered any of  
10 the Swirl Wrap product to customers?

11 A. Yes.

12 Q. Have you received any feedback from customers  
13 regarding the Swirl Wrap packaged product as compared to  
14 the original packaged product?

15 A. The feedback that I received from Wal-Mart was  
16 that the package looks fine and that was it.

17 Q. When you switched to the Swirl Wrap method, did  
18 you change the price of the product?

19 A. No.

20 Q. Did the change to the Swirl Wrap -- strike  
21 that.

22 Is the change to the Swirl Wrap method  
23 something that you've advertised as a product  
24 improvement?

25 A. Not yet.

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1 Q. Has the switch to the Swirl Wrap product  
2 changed cost of manufacturing or packaging the product?

3 A. Possibly.

4 Q. How so?

5 A. Either up or down, but I can't tell you which  
6 at this point.

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7           My presumption is it would be more cost  
8 efficient.

9           Q. I take it that Zinus has not done any type of  
10 analysis of cost changes resulting from the Swirl wrap  
11 method?

12          A. Could have.

13          Q. You're not aware --

14          A. Not aware.

15          Q. Did the switch to the Swirl wrap change in any  
16 significant way the time it takes to package the  
17 product?

18          A. Not to my -- no, not to my knowledge.

19          Q. Has Zinus documented any change in damage from  
20 the expansion of the compressed mattresses during  
21 shipping since it's changed to the Swirl wrap product?

22          A. I don't think so.

23          Q. Were there any research and development costs  
24 relating to the switch to the Swirl wrap product?

25          A. Oh, yes.

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1           Q. Do you have any estimate of what those costs  
2 were?

3           A. I don't know what those are, but there  
4 certainly were costs involved.

5           Ken, if I may, I'd like to expand on my  
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6 response with respect to the feedback --

7 Q. Sure.

8 A. -- from Wal-Mart.

9 The package was fine was the feedback, and the  
10 reason that it was fine is because his legal department  
11 agreed that it was an obvious improvement to the  
12 original and therefore, was not in violation or  
13 infringement of any complaint.

14 Q. Did you receive any feedback from Wal-Mart on  
15 the relative effectiveness of the swirl wrap process in  
16 containing the expansion of the compressed mattress?

17 A. No.

18 Q. Did you consider the -- do you consider the  
19 swirl wrap process to be novel?

20 A. What do you mean?

21 Q. Did you consider your move to swirl wrap  
22 process to be inventive?

23 A. To some extent, but mostly it is -- it was  
24 inspired from old technology, just brought into current  
25 times.

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1 Q. To what extent did you consider the move to the  
2 swirl wrap process to be inventive?

3 A. Through potentially automating it versus  
4 manually.

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5 Q. Are you aware of whether Magni used an  
6 automated process or manual process?

7 A. Not aware.

8 Q. Does Zinus intend to apply for a patent for the  
9 Swirl Wrap process?

10 A. I'm not sure we can, because I think it was  
11 patented before.

12 Q. I take it that Zinus has not to date applied  
13 for a patent on the Swirl Wrap process, correct?

14 A. Not to my knowledge in the United States.

15 Q. Has Zinus applied for the patent for a Swirl  
16 Wrap process outside the United States?

17 A. Potentially, but I don't know that.

18 Q. If Zinus had applied for a patent outside the  
19 United States, it would have been Zinus China, correct,  
20 or Zinus Korea?

21 A. Yes.

22 MR. WILSON: I'd like to have marked as  
23 Exhibit 211 a document bearing Bates number P 2019.

24 (Exhibit No. 211 was marked.)

25 BY MR. WILSON:

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1 Q. Do you recognize Exhibit 211?

2 A. Yes.

3 Q. What is it?

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4 A. It's a Swirl Wrap mattress it appears.

5 Q. Does this -- strike that.

6 Does Exhibit 211 accurately depict a Swirl Wrap  
7 mattress packaged using ribbon-shaped bands?

8 A. It appears that way from this photo.

9 MR. WILSON: I don't have any other questions.

10 MR. WALLACE: Would you like to take a break  
11 now or should I just go right --

12 MR. WILSON: If you have questions, feel free  
13 to ask them.

14 EXAMINATION BY MR. WALLACE:

15 Q. Mr. Reeves, I'm just going to ask you a few  
16 questions now to clarify the testimony that you just  
17 gave in case there was some ambiguities.

18 In your testimony before, you said that you had  
19 replaced that step with Swirl Wrap and I think you -- it  
20 referred to something to Wal-Mart and you said yes.

21 Have you ever offered the Swirl Wrap product to  
22 anybody other than Wal-Mart?

23 MR. WILSON: I'm going to move to strike the  
24 first part of the question, but I'm fine with the second  
25 part.

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1 MR. WALLACE: Okay. The reason I brought it up  
2 as ambiguous, the answer that came from the question

Exh 2.txt

3 that didn't have anything to do with it.

4 BY MR. WALLACE:

5 Q. So I'll repeat, then.

6 You testified that there were various types of  
7 mattresses in a box, including foam, air, spring, two  
8 types of spring, the original process and the Swirl Wrap  
9 process.

10 There's four types of Mattress-in-a-Box.

11 Foam, air, spring and there are two types of  
12 spring; is that right?

13 A. No, I did not testify to that.

14 Q. How many types of Mattress-in-a-Box are there?

15 A. There's three that we currently manufacture.

16 Q. What are the three?

17 A. Coil in a pocket, foam and air.

18 Q. Okay. And the foam in pocket, are there two  
19 types of that? Sorry, spring --

20 A. The coil in the pocket, there's only one type.

21 MR. WILSON: I understand.

22 MR. WALLACE: You do?

23 MR. WILSON: Let's go off the record for a  
24 second.

25 (Off record discussion.)

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♀

1 MR. WALLACE: Back on the record.  
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Exh 2.txt

2 BY MR. WALLACE:

3 Q. Is it true that the spring in pocket type of  
4 Mattress-in-a-Box can be manufactured in two ways?

5 MR. WILSON: Objection, the question is vague  
6 and leading.

7 THE WITNESS: Yes.

8 BY MR. WALLACE:

9 Q. What are the two ways?

10 A. One is the original packaging method and the  
11 other one is the swirl wrap method.

12 Q. Have you tried to sell the original method or  
13 Mattress-in-a-Box manufactured in the original method to  
14 anybody other than Wal-Mart?

15 A. Yes.

16 Q. Who did you try to sell it to?

17 A. Other countries, Canada, Europe.

18 Q. Have you ever tried to sell it to someone in  
19 the United States?

20 A. Initially, Wal-Mart.

21 Q. Anybody other than Wal-Mart?

22 A. Yes.

23 Q. Who?

24 A. I mean at a trade show, we would show our  
25 product.

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Exh 2.txt

1 Q. Have there been any deliveries in the last  
2 month of the Swirl wrap product manufactured in the  
3 original process to anybody other than Wal-Mart?

4 MR. WILSON: Objection, the question is vague.

5 BY MR. WALLACE:

6 Q. For example, in the beginning of September.

7 MR. WALLACE: I'm just trying to get the facts.

8 MR. WILSON: I'll also object it's beyond the  
9 scope of this deposition. I wasn't probing into the  
10 original Mattress-in-a-Box product or sales. I didn't  
11 ask him about those.

12 MR. WALLACE: Let's go off the record here.

13 (Off record discussion.)

14 MR. WALLACE: Back on the record.

15 BY MR. WALLACE:

16 Q. Regarding paragraph 7 of your declaration and  
17 the step described therein, when asked whether the  
18 colored film was used in all Swirl wrap products up  
19 until the date of your declaration on September 29th,  
20 you said that was true.

21 Can you think of any time before September 29th  
22 in which Zinus made a Swirl wrap product that didn't  
23 have the colored PE tarp used as the film?

24 A. We could have used it -- colored, some were  
25 blue, some were white, they were colored.

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Exh 2.txt

1 Q. In the pictures shown in Exhibit 211, P 2019,  
2 was that made before the date of your declaration on  
3 September 29th?

4 A. I don't know that would be fact, but to me,  
5 that's a white color.

6 Q. Okay. Referring to Exhibit 207 that was  
7 Exhibit R-F to your declaration, you implied that this  
8 was the only Swirl wrap product that was made with tape.

9 Can you think of any other Swirl wrap products  
10 you made in this manner?

11 MR. WILSON: Objection, leading,  
12 mischaracterizes testimony, but you can answer.

13 THE WITNESS: I think I mentioned in my  
14 deposition that we had made numerous taped Swirl wrap  
15 products, less than a hundred and -- does that answer  
16 your question?

17 BY MR. WALLACE:

18 Q. Yes. And of these less than a hundred Swirl  
19 wrap products made with tape, did you send any of those  
20 to Wal-Mart?

21 A. Yes.

22 Q. About how many?

23 A. I don't know the number, but we did send some  
24 to Wal-Mart.

25 Q. More than two?

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Exh 2.txt

1 A. May have been.

2 Q. Bear with me, I'm trying to find the e-mails  
3 here.

4 You said that you developed the Swirl wrap  
5 product at the request of Wal-Mart because Wal-Mart  
6 wanted something, you said obviously didn't do  
7 something.

8 Could you explain what specifically the  
9 decision was that Wal-Mart made about the Swirl wrap  
10 product?

11 A. No.

12 Q. Do you know who at Wal-Mart made the decision?

13 A. Their legal department.

14 Q. Do you know anybody other than their legal  
15 department?

16 A. Their outside legal department.

17 Q. Do you know who that was?

18 A. One in New York and one in Chicago.

19 Q. Do you know if the one in New York and the one  
20 in Chicago ever saw the Swirl wrap product with the tape  
21 in it?

22 A. The one in Chicago.

23 Q. How do you know they saw the product?

24 A. We sent it to them.

25 MR. WILSON: I'll object to the last two

Exh 2.txt

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1 questions as lacking foundation, which the answer  
2 revealed.

3 BY MR. WALLACE:

4 Q. You previously testified that there were -- in  
5 response to questions about two cases of Swirl Wrap  
6 product, the first being adhesive tape and the second  
7 being banding, that you attempted to sell only the  
8 second case in boxes in the United States.

9 Did you ever attempt to sell the first case of  
10 Swirl wrap product?

11 A. Initially, we showed Wal-Mart the taping as  
12 well as the banding, but we -- we believed that the  
13 banding was the best solution and Wal-Mart entrusted us  
14 to choose which was best.

15 MR. WALLACE: Okay. I have no further  
16 questions.

17 MR. WILSON: All right. We're good.

18 (WHEREUPON, the NOVEMBER 15, 2007 deposition of  
19 SCOTT REEVES was adjourned at 5:50 p.m.)

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24 SCOTT REEVES

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Exh 2.txt

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1           I, LOUISE MARIE SOUSOURES, duly authorized to  
2 administer oaths pursuant to Section 2093(b) of the  
3 California Code of Civil Procedure, do hereby certify:  
4 That the witness in the foregoing deposition was by me  
5 duly sworn to testify the truth in the within-entitled  
6 cause; that said deposition was taken at the time and  
7 place therein cited; that the testimony of the said  
8 witness was reported by me and was hereafter transcribed  
9 under my direction into typewriting; that the foregoing  
10 is a complete and accurate record of said testimony; and  
11 that the witness was given an opportunity to read and  
12 correct said deposition and to subscribe the same.

13           Should the signature of the witness not be  
14 affixed to the deposition, the witness shall not have  
15 availed himself or herself of the opportunity to sign or  
16 the signature has been waived.

17           I further certify that I am not of counsel, nor  
18 attorney for any of the parties in the foregoing  
19 deposition and caption named, nor in any way interested  
20 in the outcome of the cause named in said caption.

21           DATED: \_\_\_\_\_, 2007

22

23

\_\_\_\_\_  
LOUISE MARIE SOUSOURES, CSR 3575

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